A

MANOKARAM SUBRAMANIAM

v.

RANJID KAUR NATA SINGH

B

FEDERAL COURT, PUTRAJAYA
ZAKI TUN AZMI PCA
ARIFIN ZAKARIA FCJ
HASHIM YUSOFF FCJ
[CIVIL APPEAL NO: 02-18-2007(W)]

C

4 SEPTEMBER 2008

FAMILY LAW: *Divorce - Division of matrimonial assets - Whether leave of court could be granted to party in petition to proceed with claim for property division after decree nisi has been made absolute - Jurisdiction of court - Law Reform (Marriage and Divorce) Act 1976, s. 76(1), (3)*

D

STATUTORY INTERPRETATION: *Construction of statutes - Strict interpretation - Whether leave of court could be granted to party in petition to proceed with claim for property division after decree nisi has been made absolute - Law Reform (Marriage and Divorce) Act 1976, s. 76(1), (3)*

E

CONSTITUTIONAL LAW: *Courts - Jurisdiction - Whether leave of court could be granted to party in petition to proceed with claim for property division after decree nisi has been made absolute - Law Reform (Marriage and Divorce) Act 1976, s. 76(1), (3)*

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This was the appellant's appeal against the decision of the Court of Appeal dismissing his appeal against the High Court order granting leave to the respondent to proceed with her application for ancillary reliefs. The single issue of law requiring determination was whether leave of the court could be granted to a party in a petition to proceed with a claim for property division under s. 76 and/or under any provision of the Law Reform (Marriage and Divorce) Act 1976 ('Act') after *decree nisi* has been made absolute. The High Court judge was of the view that under the provisions of the Act, she was vested with the power and/or jurisdiction to entertain the application made by the respondent, and she proceeded to make the order in favour of the respondent.

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Held (allowing the appeal)
Per Zaki Tun Azmi PCA & Arifin Zakaria FCJ delivering the judgment of the court:

(1) The duty of the court is to interpret and apply the law. The words used in s. 76(1) and (3) of the Act are clear *ie*, an order for division of matrimonial assets is limited to the time when granting a decree of divorce or judicial separation and not at a later stage. This is the interpretation that is to be given to s. 76 of the Act. If the result is unfortunate, it is entirely a matter within the power of the legislature to take the necessary action to remedy the defects of the law as enacted. It is not for the courts to usurp the function of the legislature by straining the meaning of the clear terms of the law in seeking to evade the consequences that may ensue. In this instance, as the present application was made subsequent to the decree absolute the court had no jurisdiction to grant such an order. (paras 9 & 40)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan perayu menentang keputusan Mahkamah Rayuan menolak rayuannya menentang perintah Mahkamah Tinggi memberi kebenaran kepada responden meneruskan permohonannya untuk mendapat relif sampingan. Isu tunggal yang perlu ditentukan ialah sama ada kebenaran mahkamah boleh diberi kepada pihak dalam sesuatu petisyen untuk meneruskan tuntutannya bagi pembahagian harta di bawah s. 76 dan/atau mana-mana peruntukan dalam Akta Pembaharuan Undang-undang (Perkahwinan dan Penceraian) 1976 ('Akta') selepas *decree nisi* telah dijadikan mutlak. Hakim Mahkamah Tinggi berpendapat bahawa di bawah peruntukan-peruntukan Akta, beliau terletakhak dengan kuasa dan/atau bidangkuasa untuk mendengar permohonan yang dibuat oleh responden, dan beliau seterusnya membuat perintah yang berpihak kepada responden.

Diputuskan (membenarkan rayuan)
Oleh Zaki Tun Azmi PMR dan Arifin Zakaria HMP menyampaikan penghakiman mahkamah:

(1) Tugas mahkamah ialah untuk mentafsirkan dan menggunakan undang-undang. Perkataan-perkataan yang digunakan dalam s. 76(1) dan (3) Akta ialah jelas, iaitu, sesuatu perintah untuk pembahagian aset-aset perkahwinan dihadkan kepada masa di mana dekri penceraian atau pemisahan kehakiman dibuat dan bukan pada peringkat selepas itu. Ini adalah tafsiran yang

A patut diberi kepada s. 76 Akta. Jika akibatnya malang, ia adalah perkara yang terletak sepenuhnya di dalam kuasa badan perundangan untuk mengambil tindakan yang sewajarnya bagi membetulkan kecacatan undang-undang seperti yang dibuat. Ia tidak menjadi peranan mahkamah-mahkamah untuk merampas
B fungsi badan perundangan dengan menegangkan maksud terma-terma jelas undang-undang bagi tujuan mengelak akibat-akibat yang mungkin berikutan. Dalam kes terkini, oleh kerana permohonan ini dibuat selepas dekri mutlak mahkamah ini tidak mempunyai bidangkuasa untuk membenarkan perintah sebegitu.

C

Case(s) referred to:

Amalgamated Society of Adelaide Steamship Co Ltd [1920] 28 CLR 129 ***(refd)***

Chai Sau Yin v. Kok Seng Fatt [1966] 1 LNS 25 ***(refd)***

Chew Ling Hang v. Aw Ngiong Hwa [1997] 4 CLJ 448 CA ***(refd)***

D *Leow Kooi Wah v. Ng Kok Seng Phillip & Anor [1994] 1 LNS 179* ***(dist)***

Soo Lina v. Ngu Chu Chiong [1999] 2 MLJ 870 ***(refd)***

Tan Pau Soon v. Ling Beng Choo [1997] 2 SLR 372 ***(refd)***

Warburton v. Loveland [1832] 2 D & Cl 480 ***(refd)***

E **Legislation referred to:**

Divorce and Matrimonial Proceedings Rules 1980, r. 56(2)(a)

Law Reform (Marriage and Divorce) Act 1976, ss. 76(1), (3), 77(1)(b), 88(1), 93(1)

Women's Charter [Sing], ss. 106, 112

F **Other source(s) referred to:**

NS Bindrai's Interpetation of Statutes, 8th edn, p 275

For the appellant - V Vijaya Segaran (Hemalatha Parasa Ramulu with him); M/s Maxwell Kenion Cowdy & Jones

G *For the respondent - Harpal Singh Grewal (Jasvinjit Singh with him); M/s AJ Ariffin Yeo & Harpal*

[Appeal from Court of Appeal; Civil Appeal No: W-02-197-2002]

Reported by Suresh Nathan

H

JUDGMENT

Zaki Tun Azmi PCA:

[1] More often than not, a divorce is acrimonious. Each party
I will try to extract from the divorce the most to his or her benefit. They will fight over every little issue. Their respective lawyers will advise to take full advantage of every little technicality of the law.

One party will claim and the other will strenuously resist. Each must also be aware of their rights and comply strictly with the law. This case is one example where such situation had arisen. A

[2] From the facts that have been cited in much detail in the grounds of judgment of my learned brother Arifin Zakaria FCJ, it is clear that the respondent or her counsel had overlooked, not just once, but a number of times during the proceedings to file the correct documents within the permitted time. B

[3] Reading from the chronological order of events in the record of appeal I notice that an application for ancillary reliefs was first fixed on 28 October 1999 but because the judge did not have time to hear, it was postponed to a date almost one year later ie, 14 September 2000. On this date, the application for ancillary reliefs by the respondent was struck out because neither the respondent nor her counsel was present. According to the respondent, the date was wrongly recorded in her diary. To me, recording the date wrongly in the diary is not an excuse. On 21 September, one week later, the draft decree was sent to the respondent's solicitors for approval. However since the respondent's solicitors did not respond, the draft decree nisi was returned to the court for approval. A copy of the letter addressed to the court was sent to the respondent's solicitors. C D E

[4] On 9 October 2000 the appellant's solicitors filed in an application for an order that the *decree nisi* be made absolute. On 15 February 2001 four months later a sealed copy of the notice of application for ancillary reliefs together with supporting affidavit was sent to the appellant's solicitors by the respondent. On 27 March 2001 the appellant's solicitors filed in court the *decree nisi* together with a certificate to make the *decree nisi* absolute. On 5 April 2001, the certificate making the *decree nisi* absolute was issued by the court. Even though respondent discovered that her application for ancillary reliefs had been struck out by the court on 14 September 2000 no application was made to reinstate the application. That is another mistake. F G H

[5] The third mistake that the respondent did was in not seeking leave to file an application for ancillary reliefs since this application for ancillary reliefs was not made in the petition or in the answer thereto. This requirement to obtain leave is quite well established by the Court of Appeal judgment in *Chew Ling Hang v. Aw Ngiong* I

A *Hwa* [1997] 4 CLJ 448 and the Singapore case of *Tan Pau Soon v. Ling Beng Choo* [1997] 2 SLR 372, both cited by my learned brother in his judgment.

[6] If effort had been made by the respondent to check the law, B it would be clear from these two cases and the textbook that leave is required. Had application for leave been filed and a stay of the *decree nisi* from being made absolute sought, immediately thereafter, I am sure the court will not hesitate to grant such application for stay. From these events, it can be clearly seen that C the respondent had committed several errors or omissions on her part. The appellant of course is under no duty to point out to the respondent her errors. It is up to the respondent's solicitors or counsel to advise the respondent accordingly.

D **[7]** I feel obliged to make these comments because the courts had been repeatedly accused of being unfair to parties when in fact parties themselves have failed to file in proper documents, make proper applications, and to do so within the time provided by law. It is not as if the lawyer concerned had interpreted the law differently. If there are authorities that support the E respondent's actions perhaps the court could be sympathetic with her. The result of all these oversight is injustice to the client.

[8] So all in all, the respondent did not protect her rights well. I do not like to comment who was at fault.

F

[9] I agree with my learned brother Arifin FCJ that the duty of the court is to interpret and apply the law. In this case the words used in s. 76(1) and 76(3) are clear ie, an order for division of matrimonial asset is limited to the time when granting a decree of G divorce or judicial separation and not at a later stage. I am very sure that this is the interpretation that is to be given to s. 76. Even Singapore had to amend their Women's Charter (see new s. 112 of the Singapore Women's Charter) to enable that ancillary reliefs could be made at any time subsequent to the grant of a H judgment of divorce.

[10] In conclusion, I have this to say. I sympathise with the respondent but the law is the law. In *Chai Sau Yin v. Kok Seng Fatt* [1966] 1 LNS 25 Thompson LP said "This, however, is a I court of law and not a court of morals and it is on that basis that the case must be decided." That case was in respect of the Moneylenders Ordinance.

[11] In this present case, it is so clear that there is no room to argue that s. 76 should be interpreted in the way the respondent had asked us to do.

[12] I therefore agree with my learned brother Arifin Zakaria FCJ that this appeal be allowed. Regarding costs, bearing in mind the circumstances I will not make any order for costs. Deposit to be refunded to the appellant.

Arifin Zakaria FCJ:

Background

[13] This is an appeal by the appellant against the decision of the Court of Appeal delivered on 18 October 2006 in dismissing the appeal against the order of the High Court Judge granting leave to the respondent to proceed with her application for ancillary reliefs.

[14] The single question of law for the determination of this court reads as follows:

> Can leave of the court be granted to a party in a petition to proceed with a claim for property division under section 76 and/or under any provision of the Law Reform (Marriage and Divorce) Act 1976 after decree nisi has been made absolute.

[15] The learned High Court Judge was of the view that under the provisions of the Law Reform (Marriage and Divorce) Act 1976 ("the Act") she was vested with the power and/or jurisdiction to entertain the application by the respondent and went on to make the order in favour of the respondent.

Brief Facts

[16] The appellant and the respondent were married on 24 January 1980. On 3 August 1999, a *decree nisi* was granted by the High Court at Kuala Lumpur dissolving the marriage. The custody of the child to the marriage was granted to the respondent. The claim for ancillary reliefs which was fixed for hearing on 14 September 2000 was struck out by the High Court as the respondent and her counsel were not present in Court. The notice of application to make the *decree nisi* absolute was filed by the appellant on 9 October 2000 and the *decree nisi* became absolute on 5 April 2001.

[17] The respondent then filed a notice of intention to proceed with the ancillary reliefs dated 2 February 2001. The said application was dismissed by the High Court on 27 April 2001, on the ground that leave is required before such an application can be entertained. A fresh notice of intention to proceed with the ancillary reliefs dated 11 May 2001 was filed, this time coupled with the application for leave. A summons in chamber dated 16 May 2001 was filed by the respondent to set aside the decree absolute. The said application was dismissed by the High Court. The respondent appealed. The appeal was dismissed by the Court of Appeal on 18 October 2006. On 18 October 2007, the motion for leave to appeal to the Federal Court was also dismissed.

[18] On 14 March 2002, the leave application for the respondent to proceed with her claim for an ancillary reliefs filed on 11 May 2001 was allowed by the High Court notwithstanding the fact that the decree nisi had been made absolute on 5 April 2001. The appellant unsuccessfully appealed against the decision of the High Court to the Court of Appeal and hence this appeal.

The Issues Before This Court

[19] The answer to the question posed to us turns on the proper construction to be accorded to s. 76(1) and (3) of the Act. The relevant part of the said section is reproduced below:

> Section 76. Power for court to order division of matrimonial assets.
>
> (1) The court shall have power, **when** granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (2) …
>
> (a) …
>
> (b) …
>
> (c) …
>
> (3) The court shall have power, **when** granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale. (emphasis added)

[20] In this context it is also necessary to consider the provision of r. 56 of the Divorce and Matrimonial Proceedings Rules 1980 ("the Rules") which reads as follows:

> Rule 56. Application by petitioner or respondent for ancillary relief.
>
> (1) Any application by a petitioner, or by a respondent who files an answer claiming relief, for:
>
> (a) an order for maintenance pending suit;
>
> (b) a property division order, under section 76 of the Act; or
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> (c) a maintenance order, under section 77 of the Act,
>
> shall be made in the petition or answer, as the case may be.
>
> (2) Notwithstanding paragraph (1), an application for ancillary relief which should have been made in the petition or answer may be made subsequently:
>
> (a) by leave of the court, either by notice in Form 11 or at the trial; or
>
> (b) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 11.
>
> (3) An application by a petitioner or respondent for ancillary relief, not being an application which is required to be made in the petition or answer shall be made by notice in Form 11.

[21] In this present case it is common ground that the application for leave was made after the *decree nisi* was made absolute by the court. The application is made pursuant to the provision of r. 56(2)(a) of the rules. The court granted the leave application and this was affirmed by the Court of Appeal. In her grounds of judgment dated 15 July 2001, the learned High Court Judge granted the leave application purely for reason that there was some uncertainty as to the date when the *decree nisi* was in fact made absolute. In the interest of justice she granted leave as she was of the view that the respondent would not in the circumstances of the case be prejudiced even though the *decree nisi* had already been made absolute.

[22] We do not have the benefit of the judgment of the Court of Appeal. The learned counsel for the appellant contends that leave ought not to have been granted as it goes against the express provision of s. 76 of the Act which stipulates that the court shall have power to make the order mentioned in s. 76 only when granting a decree of divorce or judicial separation, in the present case, when the decree nisi was made absolute. Since the *decree nisi* had already been made absolute prior to the application herein therefore he contends the court is not clothed with the necessary jurisdiction to grant the leave applied for. In support he relied on the decision of the Court of Appeal in *Chew Ling Hang v. Aw Ngiong Hwa* [1997] 4 CLJ 448 and the Singapore case of *Tan Pau Soon v. Lim Beng Choo* [1997] 2 SLR 372.

[23] The power of the court to order division of matrimonial assets is governed by s. 76 of the Act. Subsection (1) of s. 76 relates to assets acquired during the marriage by their joint effort, while subsection (3) relates to assets acquired during the marriage by the sole effort of one party to the marriage. In both instances it is provided that the court shall have power to make such order "when granting a decree of divorce", that is, on the date when the *decree nisi* is made absolute.

[24] The procedure for the application of ancillary relief is governed by r. 56 of the Rules which provides that an application for ancillary relief shall be made in the petition or answer, as the case may be. Rule 56(2) provides that an application may, however, be made subsequent to the petition or answer by leave of the court, either by notice in Form 11 or at the trial.

[25] It is argued for the respondent that the use of the word "subsequently" in r. 56(2)(a) would mean that the application can be made at any time with leave of the court even after the *decree nisi* has been made absolute, as in the present case. The appellant on the other hand contends that r. 56 must be read subject to s. 76 in so far as it relates to the division of matrimonial assets. It must be emphasized that r. 56 of the rules relates to three kind of ancillary reliefs namely:

(a) maintenance pending suit;

(b) a property division under s. 76 of the Act; and

(c) maintenance under s. 77 of the Act.

[26] It is relevant to note that under s. 77(1)(b) of the Act it is expressly stated that the court may order payment of maintenance when granting or subsequent to the grant of a decree of divorce or judicial separation. Therefore, it is clear that the order for maintenance can be made even after the *decree nisi* has been made absolute. This is not so in the case of division of matrimonial assets. In s. 76 it is clearly provided that the power of the court to make an order for the division of matrimonial assets can only be exercised when granting decree of divorce and at no later stage. This seems to be the *ratio decidendi* in *Chew Ling Hang*, a decision of the Court of Appeal.

[27] In that case the appellant (ex-wife) who was duly served with the petition, did not file an answer to the petition. More than three years after the decree absolute, she applied for ancillary relief claiming a half share in a house and a car purchased by the ex-husband (respondent). The learned High Court judge dismissed the application and she appealed. The appeal was dismissed. After considering the English position on a similar issue the Court of Appeal expressed the view that the relevant section of the Act is very differently worded from the English legislation and therefore the authorities relied upon by the appellant are of no assistance. The Court of Appeal held that the Act and the rules were advisedly so worded that the decree absolute should as far as is humanly possible, leave each spouse free to make a new life for himself or herself without being unjustly harassed by fresh claims from a disgruntled ex-spouse which should have been ventilated at the time the decree was being made. This is essentially the "clean break" principle, which is intended at encouraging the parties to put the past behind them and to begin a new life without being overshadowed by the relationship that had broken down.

[28] In construing the relevant r. 56 and s. 76(1) and (3) of the Act, Mahadev Shankar JCA said as follows:

> In this case, we are concerned only with r. 56(1)(b). The ex-wife's claim for property division had to be made in her answer. Our interpretation of r. 56(2)(a) is that if the claim for ancillary relief is not made in the petition or answer, it can be made subsequently at the trial, in which case no notice in Form 11 is required, or it can be made by leave of the court by notice in Form 11. Since s. 76 requires the matter to be dealt with when granting the decree, we think the Form 11 notice must be filed before the decree is made. The words 'or at any time thereafter'

A which appears in the English Act is plainly missing in our statute. Since this case concerns an application for the division of assets acquired during marriage, it comes within the four walls of s. 76(1) and (3) of the Act. By failing to make her application before the *decree nisi* or at least before it was made absolute, we
B think that the ex-wife was too late. For the present purposes, therefore, it follows that our interpretation of the word 'subsequently' in r. 56(2) means after the answer was or should have been filed but before the grant of the decree absolute.

[29] Therefore, the learned judge had adopted a narrow
C interpretation of the word "subsequently" in r. 56(2) which we think is justified in the face of s. 76(1) and (3) of the Act. This decision of the Court of Appeal finds support in the Singapore case of *Tan Pau Soon v. Lim Beng Choo (supra)*.

D **[30]** In that case the wife filed for divorce on 10 September 1987 and the parties came to an agreement on ancillary matters. It was agreed that the wife would not ask for maintenance for herself or a share in the matrimonial flat. Decree absolute was granted on 4 April 1989. On 22 June 1995, she applied to the court for leave
E for maintenance for herself and leave to claim a share in the proceeds of the sale of the matrimonial flat. The judge initially refused leave, but upon hearing further arguments, reversed his earlier decision. Amongst his grounds in granting leave he said that the words "when granting" under s. 106 of the Women's Charter
F (Cap 353) meant that the court could entertain an application within a reasonable time after the grant of the decree. He held that the application of the wife in that case was in circumstances made within a reasonable time. On appeal by the husband the Singapore Court of Appeal reversed the finding of the trial judge.
G It was held, *inter alia*, that in proceedings for divorce, where the hearing of the ancillaries had been concluded and the *decree nisi* had been made absolute, the court had no jurisdiction thereafter to entertain an application under s. 106, even where no order under the said section had been made at the hearing of the
H ancillaries. But where the court had made an interim direction or order on the matrimonial assets and postponed the division to a later date, the court could, after the decree was made absolute, make a final order under that section. The court expressed the view that the words "when granting" appearing in sub-sections (1)
I and (3) of s. 106 only confer jurisdiction on the court to make such order at the time of the granting of the decree; in the case of a divorce when the *decree nisi* is made absolute and not

thereafter. Section 106 of the Women's Charter had since been replaced by s. 112. Under the new s. 112 of the Women's Charter the court is presently conferred with the power to order division of matrimonial asset or the sale of such asset "when granting" or "subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage". A B

[31] Writing of the new s. 112 Leong Wai Kum in his book *Principles of Family Law in Singapore*, noted:

> The new section 112 provides that the court may exercise the power 'when granting or subsequent to the grant' of any of the decrees sought in the matrimonial proceedings where the former section 106 referred only to 'when granting' the decree. (emphasis added) ... with the substitution of the new section 112, this decision is obsolete. (Meaning the decision in *Tan Pau Soon*.) C D

[32] Similarly, I would say, in our case if need be, then s. 76 of the Act need to be amended to insert the words "or subsequent to the grant" or words to the like effect in order to clothe the court with necessary jurisdiction to make such order subsequent to the granting of the decree absolute. Under the current provision of s. 76, I do not think the court has the jurisdiction to grant leave as prayed for by the respondent. It is a cardinal principle of law that the court cannot confer jurisdiction upon itself when none exist. E

[33] The above view is further fortified upon consideration of other provisions of the Act itself. Take for instance, s. 77(1)(b), where it is provided that the court may order a man to pay maintenance to his wife or his former wife when granting or subsequent to the grant of decree of divorce or judicial separation. Under s. 88(1) it is provided that the court may make order for custody of a child at any time. Similarly, under s. 93(1), the court is given the power to order maintenance for children at any time. It is a principle of statutory interpretation that when the legislature uses different language in the same connection, in different parts of the statute, it is presumed that a different meaning and effect is intended, and if different language is used in contiguous provisions, it must be presumed to have done so designedly. (*N.S. Bindrai's Interpetation of Statutes,* 8th edn. p 275). The right approach to interpretation of statute is as stated by Higgins J in *Amalgamated Society of Adelaide Steamship Co. Ltd* [1920] 28 CLR 129 at p. 161-162 which reads: F G H I

> The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or improbable.

[34] Further, it is amply clear that the court's power under s. 76(1) and (3) is indeed intended to be final. As rightly stated by Haidar J (as he then was) in *Soo Lina v. Ngu Chu Chiong* [1999] 2 MLJ 870 at p. 877:

> In the circumstances, I am of the opinion that when property adjustment order is made, be it in a judicial separation or divorce proceedings, Section 76(1) of the Act is intended to make it final.

[35] This is consistent with the "clean break" principle, as stated earlier so that the parties can move forward and start a new life without the fear of fresh claim being made by the other party hanging over his or her head.

[36] The other issue raised by learned counsel for the respondent is that in this case there was a pending application for division of matrimonial assets when the *decree nisi* was made absolute. The short answer to that is that, it may be so, but that application which was heard on 27 April 2001, was dismissed for want of leave. And it is not in dispute that the present application was filed on 11 May 2001, subsequent to the decree absolute. The respondent further applied to set aside the decree absolute. The application was dismissed by the High Court and the respondent unsuccessfully appealed to the Court of Appeal. The respondent's application for leave to appeal was dismissed by this court. In the circumstances I do not think that the respondent's contention herein could in any way advance the respondent's case.

[37] Further, the respondent seeks to rely on what was said by Mahadev Shankar J (as he then was) in *Leow Kooi Wah v. Ng Kok Seng Phillip & Anor* [1994] 1 LNS 179:

> Clearly the words of r. 56(2)(a) allows claim to be made at a point in time subsequent to the petition. Although it would have been preferably to deal with this before the decree absolute, I do not think anything turns on this.

[38] But as admitted by the learned counsel for the respondent that case concerns with the application for maintenance and not for division of matrimonial assets. It cannot therefore, be applied to the present case.

[39] Finally, I must say that this case clearly demonstrates the harsh result arising from the current provisions of s. 76(1) and (3) of the Act. But, as I find the words in s. 76(1) and (3) are clear and explicit, it is our duty to give effect to it; for in that case the words of the statute speaks the intention of the legislature. (See *Warburton v. Loveland* [1832] 2 D. & Cl. 480 per Tindal CJ at p. 489). If the result is unfortunate, it is entirely a matter within the power of the legislature to take the necessary action to remedy the defects of the law as enacted, and it is not for the courts to usurp the function of the legislature by straining the meaning of the clear terms of the law seeking to evade the consequences which may ensue. That was precisely what was done by Singapore by enacting the new s. 112 of the Women's Charter.

[40] Reverting to the issue before us, I am of the view that under s. 76(1) and (3) of the Act, the court's jurisdiction to order division of matrimonial asset is limited to the time when granting a decree of divorce or judicial separation and not at a later stage. As the present application was made subsequent to the decree absolute, therefore, I hold that the court has no jurisdiction to grant such an order.

The Result

[41] For the above reasons I would answer the question posed to us in the negative and with that, the appeal is allowed but bearing in mind the circumstances of the case I would make no order as to costs. The order of the High Court is set aside. Deposit to be refunded to the appellant.

[42] My learned brother Hashim Dato' Hj. Yusoff, FCJ has read this judgment in draft and has expressed his agreement with it.